

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

JAMES A. WIDTFELDT,

Plaintiff,

vs.

HOLT COUNTY BOARD OF
EQUALIZATION, et al.,

Defendants.

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8:05cv8

MEMORANDUM
AND ORDER

This matter is before the court on the following pending motions: (1) filing no. 19, the Motion to Dismiss filed by defendant-Holt County Board of Equalization; and (2) filing no. 32, the Motion for Additional Time filed by defendants-Nebraska Tax Equalization and Review Commission and State of Nebraska. In an Order on January 20, 2006 (filing no. 34), the court granted the plaintiff, James A. Widtfeldt, leave to amend his complaint, and the court construed the operative complaint in this action as the "Second Amended Complaint" (filing no. 14), which amends and clarifies filing no. 1.

In filing no. 32, the Nebraska Tax Equalization and Review Commission and State of Nebraska requested an extension of time to answer or otherwise respond to the initial complaint in this case (filing no. 1) until after the court had ruled on the plaintiff's motion for leave to file a Second Amended Complaint. As stated, leave to amend has been granted. Although the Nebraska Tax Equalization and Review Commission and State of Nebraska have since filed a Motion to Dismiss the Second Amended Complaint (filing no. 35) on February 1, 2006, their Motion for Extension of Time (filing no. 32) is nonetheless granted and shall have retroactive effect.

However, filing no. 19, the Motion to Dismiss filed by defendant-Holt County Board of Equalization, must be denied. The motion is not supported by the brief required by the local rules of this court, and the complaint has been superseded by the plaintiff's Second Amended Complaint. However, the denial of filing no. 19 is without prejudice to reassertion of a properly supported motion regarding the Second Amended Complaint.

THEREFORE, IT IS ORDERED:

1. That filing no. 19, the Motion to Dismiss filed by defendant-Holt County Board of Equalization, is denied; and
2. That filing no. 32, the Motion for Additional Time filed by defendants-Nebraska Tax Equalization and Review Commission and State of Nebraska, is granted.

DATED this 3rd day of February, 2006.

BY THE COURT:

s/Laurie Smith Camp
Laurie Smith Camp
United States District Judge